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HOUSE BILL 577

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Danice Picraux

AN ACT

RELATING TO INSURANCE; INCLUDING PHARMACISTS AND PHARMACIST  
CLINICIANS AS PROVIDERS OR PRACTITIONERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 59A-22-32 NMSA 1978 (being Laws 1984,  
Chapter 127, Section 454, as amended) is amended to read:

"59A-22-32. FREEDOM OF CHOICE OF HOSPITAL AND  
PRACTITIONER. --

A. Within the area and limits of coverage offered  
an insured and selected by ~~[him]~~ the insured in the  
application for insurance, the right of ~~[any]~~ a person to  
exercise full freedom of choice in the selection of ~~[any]~~ a  
hospital for hospital care or of ~~[any]~~ a practitioner of the  
healing arts or optometrist, pharmacist, pharmacist clinician,  
psychologist, podiatrist, certified nurse-midwife, registered

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1 lay midwife or registered nurse in expanded practice, as  
2 defined in Subsection B of this section, for treatment of  
3 ~~[any]~~ an illness or injury within ~~[his]~~ the scope of practice  
4 shall not be restricted under any ~~[new]~~ policy of health  
5 insurance, contract or health care plan ~~[issued after June 30,~~  
6 ~~1967 in this state]~~ or in the processing of ~~[any]~~ a claim  
7 ~~[thereunder.—Any]~~ A person insured or claiming benefits under  
8 ~~[any such]~~ a health insurance policy, contract or health care  
9 plan providing within its coverage for payment of service  
10 benefits or indemnity for hospital care or treatment of  
11 persons for the cure or correction of any physical or mental  
12 condition shall be deemed to have complied with the  
13 requirements of the policy, contract or health care plan as to  
14 submission of proof of loss upon submitting written proof  
15 supported by the certificate of ~~[any]~~ a hospital ~~[currently]~~  
16 licensed by the department of health or any practitioner of  
17 the healing arts or optometrist, psychologist, podiatrist,  
18 certified nurse-midwife, registered lay midwife or registered  
19 nurse in expanded practice.

20 B. As used in this section:

21 (1) "hospital care" means hospital service  
22 provided through a hospital that is maintained by the state or  
23 ~~[any]~~ a political subdivision of the state or ~~[any]~~ a place  
24 that is currently licensed as a hospital by the department of  
25 health and has accommodations for resident bed patients, a

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1 licensed professional registered nurse always on duty or call,  
2 a laboratory and an operating room where surgical operations  
3 are performed, but "hospital care" does not include a  
4 convalescent or nursing or rest home;

5 (2) "practitioner of the healing arts" means  
6 ~~[any]~~ a person holding a license or certificate authorizing  
7 the licensee to offer or undertake to diagnose, treat, operate  
8 on or prescribe for any human pain, injury, disease, deformity  
9 or physical or mental condition pursuant to:

10 (a) the Chiropractic Physician Practice  
11 Act;

12 (b) the Dental Health Care Act;

13 (c) the Medical Practice Act;

14 (d) Chapter 61, Article 10 NMSA 1978;

15 ~~[and]~~

16 (e) the Pharmacy Act;

17 (f) the Pharmacist Prescriptive

18 Authority Act; and

19 ~~[(e)]~~ (g) the Acupuncture and Oriental  
20 Medicine Practice Act;

21 (3) "optometrist" means ~~[any]~~ a person  
22 holding a license provided for in the Optometry Act;

23 (4) "podiatrist" means ~~[any]~~ a person holding  
24 a license provided for in the Podiatry Act;

25 (5) "psychologist" means a person who is duly

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1 licensed or certified in the state where the service is  
2 rendered and has a doctoral degree in psychology and has had  
3 at least two years of clinical experience in a recognized  
4 health setting or has met the standards of the national  
5 register of health service providers in psychology;

6 (6) "certified nurse-midwife" means ~~[any]~~ a  
7 person licensed by the board of nursing as a registered nurse  
8 and who is registered with the public health division of the  
9 department of health as a certified nurse-midwife;

10 (7) "registered lay midwife" means ~~[any]~~ a  
11 person who practices lay midwifery and is registered as a  
12 registered lay midwife by the public health division of the  
13 department of health; and

14 (8) "registered nurse in expanded practice"  
15 means ~~[any]~~ a person licensed by the board of nursing as a  
16 registered nurse approved for expanded practice pursuant to  
17 the Nursing Practice Act as a certified nurse practitioner,  
18 certified registered nurse anesthetist, certified clinical  
19 nurse specialist in psychiatric mental health nursing or  
20 clinical nurse specialist in private practice and who has a  
21 master's degree or doctorate in a defined clinical nursing  
22 speciality and is certified by a national nursing  
23 organization.

24 ~~[C. This section shall apply to any such policy~~  
25 ~~that is delivered or issued for delivery in this state on or~~

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1 ~~after July 1, 1979 and to any existing group policy or plan on~~  
2 ~~its anniversary or renewal date after June 30, 1979 or at~~  
3 ~~expiration of the applicable collective bargaining contract,~~  
4 ~~if any, whichever is later.]"~~

5 Section 2. Section 59A-46-2 NMSA 1978 (being Laws 1993,  
6 Chapter 266, Section 2) is amended to read:

7 "59A-46-2. DEFINITIONS. --As used in the Health  
8 Maintenance Organization Law:

9 A. "basic health care services":

10 (1) means medically necessary services  
11 consisting of preventive care, emergency care, inpatient and  
12 outpatient hospital and physician care, diagnostic laboratory,  
13 ~~[and]~~ diagnostic and therapeutic radiological services and  
14 services of pharmacists and pharmacist clinicians; but

15 (2) does not include mental health services  
16 or services for alcohol or drug abuse, dental or vision  
17 services or long-term rehabilitation treatment;

18 B. "capitated basis" means fixed per member per  
19 month payment or percentage of premium payment wherein the  
20 provider assumes the full risk for the cost of contracted  
21 services without regard to the type, value or frequency of  
22 services provided and includes the cost associated with  
23 operating staff model facilities;

24 C. "carrier" means a health maintenance  
25 organization, an insurer, a nonprofit health care plan or

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1 other entity responsible for the payment of benefits or  
2 provision of services under a group contract;

3 D. "copayment" means an amount an enrollee must  
4 pay in order to receive a specific service that is not fully  
5 prepaid;

6 E. "deductible" means the amount an enrollee is  
7 responsible to pay out-of-pocket before the health maintenance  
8 organization begins to pay the costs associated with  
9 treatment;

10 F. "enrollee" means an individual who is covered  
11 by a health maintenance organization;

12 G. "evidence of coverage" means a policy, contract  
13 or certificate showing the essential features and services of  
14 the health maintenance organization coverage that is given to  
15 the subscriber by the health maintenance organization or by  
16 the group contract holder;

17 H. "extension of benefits" means the continuation  
18 of coverage under a particular benefit provided under a  
19 contract or group contract following termination with respect  
20 to an enrollee who is totally disabled on the date of  
21 termination;

22 I. "grievance" means a written complaint submitted  
23 in accordance with the health maintenance organization's  
24 formal grievance procedure by or on behalf of the enrollee  
25 regarding any aspect of the health maintenance organization

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1 relative to the enrollee;

2 J. "group contract" means a contract for health  
3 care services that by its terms limits eligibility to members  
4 of a specified group and may include coverage for dependents;

5 K. "group contract holder" means the person to  
6 [~~whi-eh~~] whom a group contract has been issued;

7 L. "health care services" means any services  
8 included in the furnishing to any individual of medical,  
9 mental, dental, pharmaceutical or optometric care or  
10 hospitalization or nursing home care or incident to the  
11 furnishing of such care or hospitalization, as well as the  
12 furnishing to any person of any and all other services for the  
13 purpose of preventing, alleviating, curing or healing human  
14 physical or mental illness or injury;

15 M. "health maintenance organization" means any  
16 person who undertakes to provide or arrange for the delivery  
17 of basic health care services to enrollees on a prepaid basis,  
18 except for enrollee responsibility for copayments or  
19 deductibles;

20 N. "health maintenance organization agent" means a  
21 person who solicits, negotiates, effects, procures, delivers,  
22 renews or continues a policy or contract for health  
23 maintenance organization membership or who takes or transmits  
24 a membership fee or premium for such a policy or contract,  
25 other than for himself, or a person who advertises or

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1 otherwise holds himself out to the public as such;

2 0. "individual contract" means a contract for  
3 health care services issued to and covering an individual and  
4 it may include dependents of the subscriber;

5 P. "insolvent" or "insolvency" means that the  
6 organization has been declared insolvent and placed under an  
7 order of liquidation by a court of competent jurisdiction;

8 Q. "managed hospital payment basis" means  
9 agreements in which the financial risk is related primarily to  
10 the degree of utilization rather than to the cost of services;

11 R. "net worth" means the excess of total admitted  
12 assets over total liabilities, but the liabilities shall not  
13 include fully subordinated debt;

14 S. "participating provider" means a provider as  
15 defined in Subsection U of this section who, under an express  
16 contract with the health maintenance organization or with its  
17 contractor or subcontractor, has agreed to provide health care  
18 services to enrollees with an expectation of receiving  
19 payment, other than copayment or deductible, directly or  
20 indirectly from the health maintenance organization;

21 T. "person" means an individual or ~~[any]~~ other  
22 legal entity;

23 U. "provider" means ~~[any]~~ a physician, pharmacist,  
24 pharmacist clinician, hospital or other person licensed or  
25 otherwise authorized to furnish health care services;

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1           V. "replacement coverage" means the benefits  
2 provided by a succeeding carrier;

3           W. "subscriber" means an individual whose  
4 employment or other status, except family dependency, is the  
5 basis for eligibility for enrollment in the health maintenance  
6 organization or, in the case of an individual contract, the  
7 person in whose name the contract is issued; [~~and~~]

8           X. "uncovered expenditures" means the costs to the  
9 health maintenance organization for health care services that  
10 are the obligation of the health maintenance organization, for  
11 which an enrollee may also be liable in the event of the  
12 health maintenance organization's insolvency and for which no  
13 alternative arrangements have been made that are acceptable to  
14 the superintendent;

15           Y. "pharmacist" means a person licensed as a  
16 pharmacist pursuant to the Pharmacy Act; and

17           Z. "pharmacist clinician" means a pharmacist who  
18 exercises prescriptive authority pursuant to the Pharmacist  
19 Prescriptive Authority Act. "

20           Section 3. Section 59A-47-3 NMSA 1978 (being Laws 1984,  
21 Chapter 127, Section 879.1, as amended) is amended to read:

22           "59A-47-3. DEFINITIONS. --As used in Chapter 59A, Article  
23 47 NMSA 1978:

24           A. "health care" means the treatment of persons  
25 for the prevention, cure or correction of any illness or

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1 physical or mental condition, including optometric services;

2 B. "item of health care" includes any services or  
3 materials used in health care;

4 C. "health care expense payment" means a payment  
5 for health care to a purveyor on behalf of a subscriber, or  
6 such a payment to the subscriber;

7 D. "purveyor" means a person who furnishes any  
8 item of health care and charges for that item;

9 E. "service benefit" means a payment that the  
10 purveyor has agreed to accept as payment in full for health  
11 care furnished the subscriber;

12 F. "indemnity benefit" means a payment that the  
13 purveyor has not agreed to accept as payment in full for  
14 health care furnished the subscriber;

15 G. "subscriber" means any individual who, because  
16 of a contract with a health care plan entered into by or for  
17 ~~[him]~~ the individual, is entitled to have health care expense  
18 payments made on ~~[his]~~ the individual's behalf or to ~~[him]~~ the  
19 individual by the health care plan;

20 H. "underwriting manual" means the health care  
21 plan's written criteria, approved by the superintendent, that  
22 defines the terms and conditions under which subscribers may  
23 be selected. The underwriting manual may be amended from time  
24 to time, but amendment will not be effective until approved by  
25 the superintendent. The superintendent shall notify the

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1 health care plan filing the underwriting manual or the  
2 amendment thereto of [~~his~~] the superintendent's approval or  
3 disapproval thereof in writing within thirty days after filing  
4 or within sixty days after filing if [~~he~~] the superintendent  
5 shall so extend the time. If the superintendent fails to act  
6 within such period, the filing shall be deemed to be approved;

7 I. "acquisition expenses" includes all expenses  
8 incurred in connection with the solicitation and enrollment of  
9 subscribers;

10 J. "administration expenses" means all expenses of  
11 the health care plan other than the cost of health care  
12 expense payments and acquisition expenses;

13 K. "health care plan" means a nonprofit  
14 corporation authorized by the superintendent to enter into  
15 contracts with subscribers and to make health care expense  
16 payments;

17 L. "agent" means a person appointed by a health  
18 care plan authorized to transact business in this state to act  
19 as its representative in any given locality for soliciting  
20 health care policies and other related duties as may be  
21 authorized;

22 M "solicitor" means a person employed by the  
23 licensed agent of a health care plan for the purpose of  
24 soliciting health care policies and other related duties in  
25 connection with the handling of the business of the agent as

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1 may be authorized and paid for [~~his~~] the person's services  
2 either on a commission basis or salary basis or part by  
3 commission and part by salary;

4 N. "chiropractor" means any person holding a  
5 license provided for in the Chiropractic Physician Practice  
6 Act; [~~and~~]

7 O. "doctor of oriental medicine" means any person  
8 licensed as a doctor of oriental medicine under the  
9 Acupuncture and Oriental Medicine Practice Act;

10 P. "pharmacist" means a person licensed as a  
11 pharmacist pursuant to the Pharmacy Act; and

12 Q. "pharmacist clinician" means a pharmacist who  
13 exercises prescriptive authority pursuant to the Pharmacist  
14 Prescriptive Authority Act. "

15 Section 4. A new section of Chapter 59A, Article 47 NMSA  
16 1978 is enacted to read:

17 "[NEW MATERIAL] PHARMACIST AND PHARMACIST CLINICIAN--  
18 DISCRIMINATION PROHIBITED. --All individual and group  
19 subscriber contracts delivered or issued for delivery in New  
20 Mexico, which on a service basis or on an indemnity basis, or  
21 both, provide for treatment of persons for the prevention,  
22 cure or correction of any illness or physical or mental  
23 condition, shall include coverage for the services of a  
24 pharmacist or pharmacist clinician. "